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ENVIRONMENTAL PROTECTION AGENCY
[FRL-5059-3]

Commonwealth of Puerto Rico; Final Determination of Adequacy of
State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of adequacy to fully approve the
Commonwealth of Puerto Rico's municipal solid waste permit program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and
Recovery Act (RCRA), as amended by the Hazardous and Solid Waste
Amendments (HSWA) of 1984, requires States to develop and implement
permit programs to ensure that municipal solid waste landfills (MSWLFs)
which may receive hazardous household waste or small quantity generator
waste will comply with the revised Federal MSWLF Criteria (40 CFR part
258). RCRA section 4005(c)(1)(C) requires the Environmental Protection
Agency (EPA) to determine whether States have adequate ``permit``
programs for MSWLFs, but does not mandate issuance of a rule for such
determinations. EPA has drafted and is in the process of proposing a
State/Tribal Implementation Rule (STIR) that will provide procedures by
which EPA will approve, or partially approve, State/Tribal landfill
permit programs. The Agency intends to approve adequate State/Tribal
MSWLF permit programs as applications are submitted. Thus, these
approvals are not dependent on final promulgation of the STIR. Prior to
promulgation of the STIR, adequacy determinations will be made based on
the statutory authorities and requirements. In addition, States/Tribes
may use the draft STIR as an aid in interpreting these requirements.
The Agency believes that early approvals have an important benefit.
Approved State/Tribal permit programs provide interaction between the
State/Tribe and the owner/operator regarding site-specific permit
conditions. Only those owners/operators located in State/Tribes with
approved permit programs can use the site-specific flexibility provided
by part 258 to the extent the State/Tribal permit program allows such
flexibility. EPA notes that regardless of the approval status of a
State/Tribe and the permit status of any facility, the Federal landfill
criteria will apply to all permitted and unpermitted MSWLF facilities.

The Commonwealth of Puerto Rico applied for a determination of
adequacy under section 4005 of RCRA. The components of authority and
capability were contained in Puerto Rico's application and its
revisions. EPA reviewed Puerto Rico's application, and certain

revisions thereto, and on March 23, 1994, proposed a determination that Puerto Rico's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. Puerto Rico's revised regulation as adopted by the Environmental Quality Board, pursuant to Commonwealth law, is titled the Non-Hazardous Solid Waste Management Regulation. After consideration of all comments received regarding the tentative determination of adequacy, EPA is today issuing a final determination that the Commonwealth's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the Commonwealth of Puerto Rico shall be effective on August 26, 1994.

FOR FURTHER INFORMATION CONTACT: Jenine Tankoos, USEPA Region II, Mail Stop 2AWM, room 1006, 26 Federal Plaza, New York, New York, 10278, telephone (212) 264-1369.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b)(1) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On October 8, 1993, the Commonwealth of Puerto Rico submitted an application for adequacy determination for Puerto Rico's municipal solid waste landfill permit program. On February 17, 1994, Puerto Rico made a revised submission. On March 23, 1994, after reviewing Puerto Rico's application and the revised submission, EPA published a tentative determination of adequacy for all portions of Puerto Rico's program. Further background on the tentative determination of adequacy appears at 59 FR 13707, March 23, 1994.

Along with the tentative determination, EPA announced the

availability of the application for public comment. Puerto Rico's application for program adequacy determination and its revisions were available for public review and comment at the EPA Region II Caribbean Field Office in San Juan and at the EPA Region II Library in New York City. The public comment period commenced on March 23, 1994 and ended on May 26, 1994. The public comment period was originally scheduled to end on May 12, 1994. However, at a public hearing held on May 12, 1994, a request was made to extend the comment period and EPA responded by extending the comment period until May 26, 1994.

Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the Region scheduled four public hearings on this tentative determination. Two public hearings were held at the Solid Waste Management Authority in Hato Rey, Puerto Rico on May 11, 1994. Two additional hearings were held at the Mayaguez City Hall in Mayaguez, Puerto Rico on May 12, 1994. A summary of the comments received, and EPA's responses thereto is contained in the public comment section of this notice.

On October 4, 1993, Puerto Rico, acting through its Environmental Quality Board, adopted comprehensive, revised regulations governing solid waste disposal. These regulations are patterned after the 40 CFR part 258 criteria, and are intended to bring Puerto Rico into full conformity with the Federal criteria. The Puerto Rico Environmental Quality Board has sufficient authority and responsibility for implementing and enforcing solid waste management regulations, including a permit program, inspection authority and enforcement activities. In addition, in its application, Puerto Rico states that adequate technical, support and legal personnel will be assigned to implement its permit program.

B. Public Comment

A summary of the public comments received on the tentative determination of adequacy and EPA's responses thereto follows below.

A number of the commenters suggested that the Environmental Quality Board (EQB), Puerto Rico's regulating agency, may not effectively implement and enforce the Commonwealth's new MSWLF regulations. Commenters cited evidence of problems they believe had occurred or currently exist at particular landfill sites and which they feel EQB had not properly addressed. The EQB, however, has instituted a new structure for implementing and enforcing its new MSWLF permit program, which was developed in order to meet part 258 requirements. Upon reviewing EQB's MSWLF permit program, EPA Region II believes that problems related to regulatory oversight, will be effectively addressed under the EQB's new program. Among the changes to the program is the implementation of a new management and staffing structure. In addition, the number of employees working on the program and the number of hours of inspection and compliance training provided to staff have increased dramatically. These changes will allow the EQB to inspect landfills semi-annually whereas inspections previously took place only once per year or in some cases every other year under the previous program. Inspections by technicians at the Solid Waste Management Authority, which take place an average of 2 to 3 times per year at each landfill, will also be performed and the results of those inspections made available to EQB. Step by-step procedures for receiving and responding to public complaints, which did not exist under the previous program will also help the EQB to monitor landfills and permit a more efficient public participation process.

One commenter noted that Puerto Rico presents a different ecological situation than is found in the States, and one where it is more difficult to find a suitable location for a landfill. This

commenter felt that the Federal Government should modify its regulations for location criteria of municipal solid waste landfills to take into account that there are locations with different situations. EPA feels that the Federal regulations, 40 CFR part 258, already contain sufficient flexibility, particularly in location standards to allow an approved state to consider local conditions. The use of the flexibility, however, does require that certain environmental protection performance standards still be met.

Two commenters expressed concern that the location of landfills in Puerto Rico may violate President Clinton's Executive Order on Environmental Justice. The Federal Government, including EPA, is currently engaged in preparing a national strategy that will establish procedures to implement this order.

There were additional comments related to oversight of EQB by EPA, coordination between EQB and the Solid Waste Management Authority, siting requirements, and groundwater protection. All the foregoing comments and several additional comments that were not relative to the subject of the public hearing are addressed in the responsiveness summary which is made part of the public record.

C. Decision

After reviewing the public comments, I conclude that Puerto Rico's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the Commonwealth of Puerto Rico is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on [insert date of publication here]. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the Federal Register. All of the requirements and obligations in the Commonwealth's program are already in effect as a matter of Commonwealth law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections

2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended;
42 U.S.C. 6912, 6945, 6949a(c).

Dated: August 17, 1994.

Jeanne M. Fox,

Regional Administrator.

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